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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 NAFDEL PETROLEUM SOLUTIONS
8 INTERNATIONAL LLC, a
9 Washington Limited Liability
10 Company,

11 Plaintiff,

12 v.

13 JPMORGAN CHASE BANK,
14 NATIONAL ASSOCIATION,
15 successor in interest by purchase from
16 the Federal Deposit Insurance
17 Corporation as Receiver of Washington
18 Mutual Bank FKA Washington Mutual;
19 and Trustee QUALITY LOAN
20 SERVICE CORPORATION OF
WASHINGTON, a Washington
Corporation,

Defendants.

NO: 1:19-CV-3109-TOR

ORDER OF DISMISSAL

18 BEFORE THE COURT are Defendants JPMorgan Chase Bank, N.A.'s and
19 Quality Loan Service Corporation's Motions to Dismiss. ECF Nos. 8, 9. Plaintiff
20 has filed no opposition to either motion. These motions were heard without oral

1 argument. The Court has reviewed the record and files herein, and is fully
2 informed. For reasons discussed below, as well as the reasons given in the Court's
3 Order denying preliminary injunction (ECF No. 19), the Court **GRANTS**
4 Defendants' Motions to Dismiss.

5 **BACKGROUND**

6 On May 16, 2019, Plaintiff Nafdel Petroleum Solutions International LLC, a
7 Washington limited liability company, filed a Complaint in Yakima County
8 Superior Court asserting two causes of actions against Defendants JPMorgan
9 Chase Bank, National Association ("Chase"), and Quality Loan Service
10 Corporation of Washington ("Quality Loan"), relating to Defendants' efforts to
11 foreclose a non-party's Deed of Trust. ECF No 1-1 at 9-14. Defendants removed
12 the matter to this Court on May 22, 2019. ECF No. 1.

13 On July 3, 2019, Plaintiff filed a motion seeking to enjoin an upcoming
14 trustee's sale of the real property at issue. ECF No. 10 at 2. Chase and Quality
15 Loan responded separately on July 9, 2019. ECF Nos. 14; 16. The Court held oral
16 argument and issued a written Order denying the motion for preliminary injunction
17 to restrain the trustee sale and other relief. ECF No. 19.

18 In the meantime, Defendants filed motions to dismiss, which are now before
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1 the Court. Plaintiff has filed no opposition to the motions.¹ The parties are
2 familiar with the facts, which will not be repeated here.

3 DISCUSSION

4 Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may
5 move to dismiss the complaint for “failure to state a claim upon which relief can be
6 granted.” Fed. R. of Civ. P. 12(b)(6). To survive dismissal, a plaintiff must allege
7 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
8 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
9 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This requires the plaintiff to
10 provide “more than labels and conclusions, and a formulaic recitation of the
11 elements.” *Twombly*, 550 U.S. at 555. When deciding, the Court may consider the
12 plaintiff’s allegations and any “materials incorporated into the complaint by
13 reference.” *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061
14 (9th Cir. 2008) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308,
15 322 (2007)). A plaintiff’s “allegations of material fact are taken as true and

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17 ¹ In addition to the substantive reasons for dismissal, Local Civil Rule 7(e)
18 provides that failure to file an opposition to a motion may be deemed as consent to
19 the entry of an order adverse to that party. The Court deems Plaintiff’s failure to
20 respond as consent to dismissal.

1 construed in the light most favorable to the plaintiff[,]" but "conclusory allegations
2 of law and unwarranted inferences are insufficient to defeat a motion to dismiss for
3 failure to state a claim." *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir.
4 1996) (citation and brackets omitted).

5 Plaintiff's quiet title claim fails because: (1) Chase's Note is an installment
6 note and the six-year statute of limitations does not start until 2037; (2) Chase's
7 Deed of Trust does not affect Plaintiff's title; and (3) to quiet title to a property
8 with a known lien requires a tender of the loan balance, which Plaintiff does not
9 allege.

10 Plaintiff's injunction/breach of RCW 61.24 claim fails because: (1) an
11 injunction is not a separate claim; (2) Plaintiff cannot sue for wrongful foreclosure
12 pre-sale; (3) third-party Plaintiff cannot challenge a non-judicial foreclosure on
13 someone else's Deed of Trust; and (4) Plaintiff took title subject to Chase's valid
14 lien so it cannot enjoin a sale.

15 A party may amend its pleading with the court's leave, which "[t]he court
16 should freely give . . . when justice so requires." Fed. R. Civ. P. 15(a)(2). "This
17 policy is to be applied with extreme liberality." *Eminence Capital, LLC v. Aspeon,*
18 *Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (internal quotation marks omitted).
19 "Dismissal with prejudice and without leave to amend is not appropriate unless it is
20 clear on *de novo* review that the complaint could not be saved by amendment." *Id.*

1 at 1052. Leave to amend can and should generally be given, even in the absence of
2 such a request by the party. See *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir.
3 2016) (“[A] district court should grant leave to amend even if no request to amend
4 the pleading was made, unless it determines that the pleading could not possibly be
5 cured by the allegation of other facts.”).

6 The Court determines that amendment would be futile; no amendment could
7 possibly cure the deficiencies of the Complaint. Accordingly, leave to amend is
8 denied.


9 **ACCORDINGLY, IT IS ORDERED:**

- 10 1. Defendants JPMorgan Chase Bank, N.A.’s and Quality Loan Service
11 Corporation’s Motions to Dismiss, ECF Nos. 8, 9, are **GRANTED**.
12 2. The Complaint is **DISMISSED with prejudice**.

13 The District Court Clerk is directed to enter this Order and Judgment
14 accordingly, provide copies to the parties, and CLOSE the file.

15 **DATED** August 27, 2019.




THOMAS O. RICE
Chief United States District Judge